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The American Review of Public Administration 2015 45: 46 originally published online 25 November 2013

DOI: 10.1177/0275074013510771

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American Review of Public Administration
2015, Vol. 45(1) 46–60
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DOI: 10.1177/0275074013510771
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Patrick Overeem¹

Abstract

Among the plethora of public values, one special class is that of “regime values.” This notion plays a central role in the constitutional approach to public administration mainly developed by the late John A. Rohr. In this article, an attempt is made to assess the viability of Rohr’s concept of regime values and its applicability outside the United States. After brief overviews of the constitutional approach in general and Rohr’s use of the concept of regime values in particular, it is argued that Rohr’s conceptualizations of “regime” and “values” are too narrow and result in ambiguities within the concept of “regime values” itself. The applicability of the concept of “regime values” is unnecessarily affected by the typically American reference points Rohr uses and can best be improved, it is suggested, by treating “regime values” more frankly as an inherently normative concept.

Keywords

regime values, public values, constitutionalism, John A. Rohr, United States

The upholding of regime and regime values is a normal source of public-service obligation, and the Constitution is the foundation of regime and regime values for the United States. But note: not an unambiguous foundation.

Waldo, 1980, p. 103

Regime Values: Rohr’s Legacy

Great contributions to a discipline are typically not made by job-hopping academics doing much consultancy work but by ivory tower scholars working for decades in the same place with a fine brush on learned monographs. In Blacksburg, Virginia, the late public administration theorist John A. Rohr (1934-2011) has been doing precisely that. Through his erudite, even wise writings, he has considerably promoted the development of the so-called constitutional approach in American and international public administration. This article makes a necessarily limited attempt to investigate Rohr’s legacy by offering a critical assessment of one concept in his writings, namely, the concept of “regime values.”

¹Leiden University, The Hague, Netherlands

Corresponding Author:

Patrick Overeem, Institute of Public Administration, Leiden University, Campus The Hague, Schouwburgstraat 2, 2511 VA, The Hague, Netherlands.
Email: p.overeem@cdh.leidenuniv.nl

Regime values can be briefly defined, for a start, as collective benefits promoted by a given political order. Thus understood, they are a special class in the plethora of public values that currently gains so much scholarly attention (Bozeman, 2007), but in most discussions of public values, they tend to go unnoticed. Regime values are not recognized as a definite set in the common public value categorizations (Rutgers, 2008), and only three values of this kind are given a place in Jørgensen and Bozeman's (2007) public values inventory, namely, regime stability and regime dignity (a subgroup of the "public sector's contribution to society"), and regime loyalty (in relation to integrity). While the notion of regime values plays a crucial role in the constitutional approach literature, it hardly does so in the public values literature. It seems fitting to subject the concept to closer scrutiny and see whether it is useful enough to become part of the wider public values discourse.

Overall, Rohr's concept of regime values has been received with sympathy. Dwight Waldo, in the passage quoted above this article, mentioned it as the first of many objects of administrative obligation. And T. L. Cooper (2004) has offered "regime values, constitutional theory, and Founding thought" as the first possible answer to the first of his four "big questions for administrative ethics," which reads, "what are the normative foundations for public administration ethics?" (p. 396). These two examples, to which more could be added, illustrate the respected position of Rohr's concept in the literature. Interestingly, however, Rohr's concept of regime values has also been contested not only by theorists with radically different perspectives (such as postmodernists, as we will see below) but also from within his own circles, so to speak. Peter Lawler (1988), a political theorist who has contributed to the constitutional approach to public administration himself and who is generally sympathetic to Rohr's work, reproached Rohr for having "introduced the unnecessarily vulgar and misleading phrase 'regime values' into the discourse of American public administration" (p. 55, Note 16). To this, he adds being glad that Rohr has left the phrase out of later publications and wishing that his example will be followed. Lawler seems to overlook, however, that the absence of a phrase need not mean that the concept to which that phrase refers is also abandoned. Rohr himself, in any case, continued to adhere to the concept (as he confirmed to the present author in a personal communication in 2010), and it is relevant to see what he meant by it. Moreover, if there would be good reasons to abandon the phrase and the concept, attempting to articulate those reasons seems a worthwhile enterprise. So in this article, I examine the meaning and usefulness of the concept of regime values as one of the building blocks in the normative foundation for public administration. More particularly, I assess its applicability to regimes other than the United States: Is "regime change" for this concept possible? In other words, can regime values be considered a useful source of legitimacy and moral guidance for public administration and can the concept also be used in contexts other than the American one?

To answer these questions, I will first briefly discuss the constitutional approach to public administration in general ("The Constitutional Approach"). Then, Rohr's concept of regime values is expounded in the section "Rohr's Concept." The section "Regime, Values, and Regime Values" offers a critical conceptual analysis of the concepts of regime, values, and regime values. Next, the question is addressed whether Rohr's concept of regime values can also be applied outside the United States of America ("Applicable Outside the United States?"). I conclude with a suggestion intended to make Rohr's concept of regime values more meaningful and more widely applicable ("Toward a More Normative Conceptualization").

The Constitutional Approach

Although constitutional issues have long been neglected in the study of administration, since the 1980s a considerable amount of attention has been paid to the subject (an early exception is Long, 1952, 1954, 1962). A full-fledged constitutional approach to public administration has emerged

in which the work of Rohr has always been on the forefront. Rohr was of course not entirely unique in this approach. While doing his PhD in Chicago in the late 1960s, he was (with later public administration eminence David Rosenbloom) tutored by Herbert Storing, and several of Rohr's most important insights can be found in Storing's writings already (cf. Storing, 1995c). Storing and Rohr were, in turn, students of the well-known political philosopher Leo Strauss. Although Rohr never became a Straussian in the strict sense of the word, his writings—not least those about regime values—do show traces of Strauss' interest in classic political philosophy (Pangle, 2006, pp. 115-117).

Partly because of his early death and partly because the bulk of his work was in the history of American political thought, Storing has long remained relatively unknown among students of public administration (but see Morgan, Kent, Rohr, Rosenbloom, & Schaefer, 2010). Rohr, by contrast, has devoted a long and prolific career in that discipline and had considerable success in enthusing others for his approach. To speak of a Constitutional School, as Spicer and Terry (1993) and others have done, may seem a bit grandiose, but certainly, the approach has attracted notable contributors and the constitutional literature on public administration has been growing steadily (Newbold, 2010; cf. also Rohr, 1995, p. xiii, especially Note 6). Within this group, Rohr arguably stands out as a respected scholar and many of his arguments and concepts have become part of the constitutionalists' standard repertoire.¹

The main concern of Rohr and the other constitutionalists has been to argue the *legitimacy* of public administration within the American political order, understanding this neither as a legal term (legality) nor as a political term (popularity) but rather as a moral term: Public administration must be justified, particularly in constitutional terms (Rohr, 1986, p. x). Thus understood, they addressed the question of the legitimacy of public administration on two levels. First of all, there is the legitimacy of public administration as a whole: How can this institution, particularly in the expanded form it has today, be justified as a part of the constitutional system? Rohr (1986) addressed this issue with argumentative skill and historical acumen in his best-known book, *To Run a Constitution*, where he claimed that the American administrative state, although unforeseen, is compatible with the constitutional republic envisaged by the founders. Indeed, it plays an important role as stabilizing factor or “balance wheel,” originally reserved for the Senate, and compensates for a lack of democratic representativeness in the House (Rohr, 1986, chaps. 3 and 4; cf. Morgan, 1988; Storing, 1995a, p. 419; 1995b, p. 302). This line of reasoning also became a cornerstone in the Blacksburg Manifesto aiming at a “refounding” of public administration (cf. Rohr, 1990).

Second, constitutional theorists have argued the legitimacy of administrative action at the level of individual government functionaries: How can administrative action be attuned to the Constitution? Here, constitutional thought was brought to bear on the just then developing sub-field of administrative ethics. Particularly, Rohr's other well-known book, *Ethics for Bureaucrats* (1989; first published in 1979), addressed this issue and made the concept of regime values, as we will see, key to his answer. A standard move for Rohr and for other constitutional theorists addressing this question is to start from the notion, or indeed fact, of administrative discretion (hence, they have been lumped together into a “discretion school”; Fox & Cochran, 1990; cf. Morgan, 1990). Discretion gives administrators considerable scope for action and thus for taking constitutional responsibility, indeed even a duty to show “administrative statesmanship” (Dannhauser, 1980; Rohr, 1986, p. 185; Storing, 1995a; cf. Lawler, Schaefer, & Schaefer, 1998; Newswander, 2012).

Academically, the constitutional approach has found itself at odds with the modernist mainstream as well as with various postmodernist sidestreams of contemporary public administration theory: It is more frankly normative and at the same time less “critical” and skeptical than these two allow. Examining these interesting confrontations falls outside the scope of this article, but even if one appreciates (as I do) the constitutional approach as valuable, one can still criticize

some of its *internal* weaknesses. The main of these is that, ironically, some elements of the approach go against the grain of constitutionalism itself. Precisely because of the polarized American context in which it developed, the approach has mainly been concerned with “positive constitutionalism”: arguing the legitimacy of public administration against its critics. Doing so, it has underemphasized, however, the relevance of “negative constitutionalism”: the need for constitutional checks on government power. In other words, the Constitution has been appealed to for its enabling function at the expense of its disabling (or limiting) function (cf. Holmes, 1995, pp. 7-8, 101-102). This is very understandable from the climate in which the constitutional approach arose, but it has led to polemical one-sidedness and occasionally and unnecessarily alienated less progressive scholars, including myself, interested in the constitutionality of public administration (e.g., Pestritto, 2007).²

In particular, the idea of public administrators keeping the ship of state in balance by “choosing their constitutional masters” by their own discretion seems at odds with constitutionalism. The public administration, although autonomous in some respects, should in general be kept subordinate to the traditional three branches. Admittedly, Rohr (1990) himself recognized this aspect:

The Public Administration neither comprises nor heads any branch of government but is subordinate to all three of them. Like Congress, president, and courts, the Public Administration makes its distinctive contribution in a manner consistent with its peculiar place, which is one of subordination. (p. 80)

He almost turned this idea on its head, however, when he added that this “subordinate capacity” gives public administrators the possibility of “choosing [their] constitutional masters” and, hence, “the opportunity to shape events” (1990, p. 81; cf. 1986, pp. 181-185). This reversal, which reminds one of Hegel’s master/slave dialectic, seems at odds with constitutionalism and the intentions of the Founders.

I have dwelled for a moment on these characteristics and internal problems of the constitutional approach, because many of them also pertain to the notion of regime values. Before that can be shown, we must first see what Rohr meant by that notion.

Rohr’s Concept

Rohr presented his concept of regime values for the first time in a 1976 article and subsequently gave it a prominent place in his *Ethics for Bureaucrats*. He returned to the concept in 1998, when he wrote an entry about “regime values” in the *International Encyclopedia of Public Policy and Administration*. This brief entry opens as follows:

REGIME VALUES. An expression used frequently in public administration literature to denote the fundamental principles of a polity which, ordinarily, should guide administrative behavior. Although the term applies in principle to any polity, de facto it appears almost exclusively in literature focused on the United States. The expression entered the public administration literature in the first edition of this author’s *Ethics for Bureaucrats: An Essay on Law and Values*. (Rohr, 1998b, p. 1929)

Rohr’s basic argument is that an orientation on regime values can help bureaucrats to choose their path when the law gives them no guidance and they have to make use of their own discretion.³ To do him justice, it must be underlined at the outset that Rohr’s intention is primarily pedagogical. He presents his “method” of regime values in the context of a discussion about the best way to teach administrative ethics, as a “practical teaching device” for “busy bureaucrats” (1989, p. 77) or, in the earlier version, “career-oriented students” (1976, p. 402). This context explains many peculiarities of Rohr’s concept of regime values, such as their relatively general

character: It is impossible and undesirable, he argues, to discuss all the varied ethical problems of different government agencies in the classroom (1989, pp. 71-72). However, this original purpose of "regime values" as a concept for teaching administrative ethics does not, of course, preclude a critical analysis outside the classroom. In academia perhaps even more than elsewhere, the concepts we teach should have a sound basis and a clear meaning.

Sometimes, Rohr speaks of regime values as "the values of the people" (1976, p. 399), "the values of the American people," or simply "American values" (1989, p. 74), especially when he wants to emphasize the democratic responsibilities of civil servants. More important than these, however, are their republican commitments, symbolized by the oath of office: "The oath to uphold the Constitution is the moral foundation of ethics for bureaucrats" (1989, p. 70; cf. Du Gay, 2002, pp. 463-464). This oath is indeed required for "officers" (so not for employees) by the Constitution itself⁴ and implies, for Rohr (1989), a direct moral and professional obligation to promote the values of the regime (p. 68).

Now, what exactly are these American regime values? In *Ethics for Bureaucrats*, Rohr explicates three of them, namely, freedom, equality, and property. Of course, he is well aware that the Declaration of Independence mentions a different set (namely, life, liberty, and the pursuit of happiness), but unfortunately, he does not explain why he opted for his own triad instead. He only says that "freedom, equality, and property are prominent examples of regime values, but they do not exhaust the concept" (1989, p. 285). This leaves the reader wondering what other values may be included. Rohr himself, at any rate, has explicitly refused to treat the value of "social equity," espoused by adherents of the New Public Administration movement and followers of Rawls, as an American regime value.⁵ Even more emphatically, he has excluded "fraternity" (suggested by Frederick Thayer) from his catalog (1981, p. 98).

How should students of administrative ethics go about studying regime values? According to Rohr, "these values can be discovered in the public law of the regime" (1989, p. 68). In his view, the most suitable source to study regime values, at least in America, is Supreme Court opinions. After all, the Supreme Court is the principal interpreter of the Constitution and its opinions, Rohr argues, have four characteristics that make them particularly instructive for students of public administration. First of all, they are institutional in the sense that they have a grounding in the past which gives them stability. Second, they are dialectic, consisting of concurring and dissenting opinions that can sharpen the administrative mind. Third, they are concrete and "disciplined by reality" and, thus, especially useful for administrative practice. Finally, they are pertinent, that is, not about trivialities but "useful for reflection on fundamental values" (1989, pp. 77-84).⁶

Notwithstanding the massive importance of the Supreme Court interpretations, the oath of office, and the Constitution itself, Rohr contends that the usefulness of his concept of regime values is not limited to the United States. Indeed, he says that he deliberately speaks about "regime values" rather than "constitutional values" to make this clear:

By "regime values," I intend to suggest that the normative foundation of ethical standards for public servants in *any* regime is the values of that regime. In the United States these regime values happen to be constitutional values, but not every regime takes its constitution as seriously as Americans do . . . By using the word "regime," my intention was to stress the particularistic character of the values that form the basis of public administration ethics. By emphasizing regime rather than constitution, I hope to make this book more interesting to students from other countries who are studying public administration in the United States. (Rohr, 1989, pp. ix-x)⁷

In a passage that argues for the cross-national applicability of his concept of regime values, the word "particularistic" is strangely ill-chosen. Apparently, Rohr wants to say two things: On the one hand, all regimes have regime values, so the concept of regime values is general; on the other, each regime has its own regime values, so regime values themselves are particularistic.

Regime, Values, and Regime Values

As said, Rohr's work has been criticized from without as well as from within the "Constitutional School." Fox and Miller, two notable postmodern scholars of public administration, have mainly criticized Rohr's approach from without, but interestingly, they have also offered an internal criticism of the notion of regime values. They assert that Rohr's regime values are "vanishing referents" ("Like mirages and rainbows, they disappear when approached"), because they are defined tautologically:

They take the form: What is X? It is Y. What is Y? It is Z. What is Z? It is X. (For example, what are constitutional values? They are regime values. What are regime values? They are the polity. What is the polity? That political entity that was brought into being by the ratification of the Constitution.) Like the classic caricature of a bureaucratic runaround, we are endlessly transferred to the next office without satisfaction. (Fox & Miller, 1996, p. 44)

Although eloquently formulated and even funny, this critique is quite misplaced. For one thing, Fox and Miller's reconstruction of Rohr's conceptual framework is not very accurate. He nowhere defined constitutional values as regime values, let alone regime values as "the polity." Rohr is much more careful in his writings.⁸ Moreover, the fact that concepts in a coherent framework refer to each other is not necessarily problematic, depending on the purposes of the framework. They can even help generate insights into the outer world as long as these concepts (or some of them) also have theoretical or practical referents outside that framework. In Rohr's work, this certainly is the case. The historical event of the ratification of the Constitution (mentioned by Fox and Miller) is a good example.

The inappropriateness of this particular critique does not mean that Rohr's concept of regime values is entirely unproblematic. To assess how meaningful and useful it is, we must first examine the meaning of "regime" and "values" as the building blocks of the compound concept of "regime values." To the objection that it is unfair to dissect a compound concept in this way, it can be replied that Rohr himself explains what he means by "regime" and "values" separately (1989, pp. 68, 74). So for him, apparently, understanding these two concepts is at least helpful to understand his compound concept.

Rohr elaborates on the meaning of regime as follows:

The word "regime" is not used in the journalistic sense of the "Carter regime," or the "Reagan regime," and so on. Rather it is simply intended as the best English equivalent of what Aristotle meant by a "polity." More specifically by the American "regime," I mean the fundamental political order established by the Constitution of 1789. (1989, p. 3; also p. 68).⁹

In a long but fascinating footnote, he adds,

for those who distinguish state and society, "regime," as used in this essay, is closer to society than state. Although the distinction of state and society is a philosophical question of the first order, I do not think it makes any difference for the purpose of this book just where one stands on this great issue. Those who, like Aristotle, do not distinguish state and society may perhaps feel more comfortable with the words "regime" or "polity" than those who make this distinction. The latter may prefer the somewhat ambiguous term "society values." It is important to note, however, that I am not talking exclusively about the values of the "state"—the authoritative and coercive agent of a political society. (Rohr, 1989, pp. 90-91, Note 33)

With this interpretation of Aristotle's concept of *politeia*, Rohr is certainly not idiosyncratic. Leo Strauss, Rohr's teacher, had already explained that for the ancients, "*politeia* is not a legal

phenomenon”: “*Politeia* means the way of life of a society rather than its constitution,” although the former is shaped by the latter (1953, p. 136). Therefore, Strauss says, “[w]e shall translate *politeia* by ‘regime,’ taking regime in the broad sense in which we sometimes take it when speaking, for example, of the Ancien Régime of France” (1953, pp. 136-137). This is also precisely the understanding of “regime” Rohr adopts. For him, “regime” is a broadly cultural rather than a narrowly legal concept.

The Aristotelian concept of “regime” used by Rohr is not easily accessible to modern audiences, while among the moderns, it may prove to be more difficult to comprehend for Europeans than for Americans. As is generally known, the Americans have a weak sense of state (Dyson, 1980; Rutgers, 2001; Stillman, 1990, 1997) and the state/society distinction easily collapses in their mind. Europeans, by contrast, are traditionally schooled in forms of political and administrative thought in which the concept of state is much more prominently. For all their organicism, they tend to see the state as fundamentally different from, and somehow elevated above, society. Accordingly, they would be tempted to see the American Constitution, its Supreme Court interpretations, and the oath of office as epitomes of the American “state” rather than of American society. Thus, the difference between American “statelessness” and European “stateness” could turn out to create difficulties for the successful exportation of Rohr’s constitutional approach across the Atlantic.¹⁰

Other problems are connected with the second conceptual element of “regime values”: the concept of values. Rohr (1989) defines “values” as follows: “By ‘values’ I mean beliefs, passions, and principles that have been held for several generations by the overwhelming majority of the American people” (p. 74). In the 1976 article, he gives another (although congruent) definition:

A “value” in the life of a person as well as a nation suggests a pattern of attitudes or behavior that recurs with some frequency. An attitude or a passion or a principle must have a history—either personal or societal before it becomes a “value.” (1976, p. 402)

As Rohr himself admits, these definitions of values are “a bit thin” (1989, p. 92, Note 44). They are certainly at odds with the Aristotelian, Thomist, and Straussian threads seamed so liberally through his writings, because they seem to make values contingent on a particular historical situation rather than reflective of an objective, unchangeable, and universal natural law.

To understand Lawler’s aversion to Rohr’s notion of regime values, it may help to know that the very concept of “values” is not very popular in Straussian (or more broadly, classicist) circles. Strauss (1953) himself gave a fundamental critique of Weber’s treatment of values, particularly his fact-value separation and his value pluralism (pp. 35-80), and Allan Bloom (1987), perhaps the most illustrious of Strauss’ pupils and another Chicago professor, in his bestselling *The Closing of the American Mind* directly associated the concept of values to Nietzschean nihilism (pp. 194-216). Perhaps these attacks were unnecessarily vehement and certainly, the concept of values itself does not imply moral pluralism, let alone moral relativism or nihilism. At any rate, Rohr does not seem to share these Straussian concerns. Yet, there is something paradoxical about his notion of regime values, with its explicit conjuncture of the ancient concept of “regime” (*politeia*) and the modern concept of “values.” The *querelle des anciens et modernes*, which was so fiercely poked up by Strauss, is smoldering in the heart of Rohr’s concept.

What problematizes things further is that regime values are clearly not the only or even the highest kind of values bureaucrats have to promote. As Waldo has shown, bureaucrats find themselves in a myriad of multiple and often conflicting obligations. Apart from the regime or Constitution, he lists the law, the nation or the country, democracy, organizational-bureaucratic norms, their profession and professionalism, family and friends, self, middle-range collectivities, the public interest or general welfare, humanity or the world, and finally religion or God (1980).

Hence, some authors have criticized Rohr for not casting his net widely enough: "Limiting research on values in public administration to those associated with a regime ignores the accumulated spiritual wisdom developed over centuries of human experience" (Lynch, Omdal, & Cruise, 1997, p. 475; cf. Jennings, 1991).¹¹ This critique seems a bit gratuitous; few authors in public administration have drawn on a wider range of moral sources than Rohr. Moreover, he is well aware of the myriad of obligations public officials face (e.g., 1989) and recognizes that these obligations do not all have equal status or pertinence for civil servants. This important recognition does not solve all questions about conflicting obligations, however. While at times Rohr seems to suggest that the constitutional responsibilities of public servants are overriding all others ("For public administrators, the Constitution is the cause above causes"; 1990, p. 82), at other times, he acknowledges that regime values "are not the highest values to which a regime might aspire" (1989, p. 76). Despite his considerable and admirable amount of "constitutional patriotism," Rohr is no Machiavelli asking us to love our city more than our souls.

Whatever the rank of regime values among other relevant obligations, Rohr was of course right to emphasize that with their oath of office, American civil servants accept a special obligation to their Constitution. One could ask, however, what this commitment "to uphold the Constitution" means. Is "upholding" the Constitution the same as "running" the Constitution?¹² Rohr clearly intends it to be something more: He requires civil servants to be conscious and serious about their constitutional responsibilities (cf. Du Gay, 2002, pp. 467-468). The question is, however, whether the Constitution and the constitutional tradition themselves require this. Article VI, 3 of the U.S. Constitution only demands an oath to "support" that same Constitution, without specifying the meaning of that verb. And did not Madison in *Federalist Paper* 51 allow each branch of government to follow its own ambitions? Apparently, he did not expect constitutional actors to elevate their motives and subordinate their interests. In similar vein, one could say, public servants will fulfill their constitutional duty when they "just do their job" (and not, of course, try to subvert the Constitution). Upholding the Constitution, although their duty, is not their job; it will be the fortunate result (so we can hope) of a properly executed function rather than its immediate substance.¹³

Applicable Outside the United States?

To assess the applicability of the concept of regime values outside America to other states, one cannot simply go about studying the regime values of those states empirically. The reason is not that empirical study as such falls outside the scope of the constitutional approach (Rohr's writings are well-informed about the constitutional and administrative practices of other states), but that it would be putting the cart before the horse: To find the regime values of other states, we should first know whether and how the concept applies there. To this (admittedly narrow) question I now turn.

Until the present day, the constitutional approach has remained almost entirely confined to the American study of public administration and it has not been widely disseminated outside the United States.¹⁴ In particular, the approach has found little resonance in European public administration—which is strange, because especially on the Continent, public administration is traditionally related to the highest values of the state (Rutgers, 2001; Stillman, 1997). To a considerable degree, the American constitutional theorists themselves seem responsible for this limited appeal of their approach in other parts of the world. Through their strong associations with the earlier mentioned ideological battles of the 1980s and 1990s, and their almost exclusive focus on the American Founding, they have given their contributions a typical American twist. So for a successful dissemination, the concept of regime values underlying public administration will need better theoretical underpinnings. They should not be derived exclusively from originalist readings of the American Constitution, other Founding texts, and Supreme Court opinions but

from the constitutional arguments underlying those venerable documents. A more political philosophical and less legalistic approach could make the constitutional approach and the concept of regime values better suited to other polities as well.

That such an approach is not without risk is illustrated by Terry L. Cooper. He has made an attempt to extend the concept of regime values “beyond Rohr’s specific focus on the U.S. Constitution” (although still associated with “the American tradition”) and has thus come up with a much broader list of values, including

the beneficial aspects of a pluralism of interest, the creative possibilities in conflict, the sovereignty of the public, the rights of the minority, the importance of citizen participation in government, the societal values of freedom of expression, and the centrality of justice in the relationship between the people and their government [and these, T. L. Cooper (2006) adds, are] but a few exemplary values. (p. 195)

Here, we see that as soon as one loosens Rohr’s tightly American reference points, the number and vagueness of regime values easily become unmanageable.

Still, if the concept must be applied to other regimes outside America, it is imperative to adopt a less particularistic and, I would argue, a more political philosophical approach. In *Ethics for Bureaucrats*, Rohr claims that students of public administration can be assumed to accept the American regime as fundamentally (although not perfectly) just.¹⁵ That can be inferred, he argues, from their choice for a professional education (1989, p. 70). He recognizes that the questions about the justice of the regime they are going to serve are more important than, and indeed prior to, other questions of administrative ethics, but for practical reasons, he brackets them, believing that public administration students cannot be expected to delve deeply into these (inherently political philosophical) questions:

The price, then, that the professional study of ethics for bureaucrats exacts from the curriculum is that questions of political philosophy (“Is the regime just?”) must yield to less fundamental questions such as “How can I promote the values of the regime?” The method of regime values eschews metaphysics and addresses the students in the existential situation in which it finds them—persons who have taken or are about to take an oath to uphold the values of a particular regime. It admonishes them that taking such an oath presupposes an acceptance of the fundamental justice of the regime but does not require into how the students arrived at the conclusion that the regime is just. (1989, pp. 70-71)

Now, this limitation may be justifiable for educational purposes (although one can ask whether the “price” is not too high), but as soon as we ask whether Rohr’s notion of regime values can be used as a “normative foundation for public administration ethics” (following T. L. Cooper; 2004, p. 396) and whether it is applicable not just to the American regime but also to others as well, questions about the justice of regimes cannot and should not be avoided.¹⁶ When a regime systematically tramples on freedom, equality, or property (or other regime values), that regime cannot be fundamentally just. Not only bad constitutional design but also systematic violation of regime values can make a regime “fundamentally unjust.” So questions about the justice of particular regimes (of established democracies such as Denmark no less than of undemocratic states such as China) are unavoidable.

Finally, the cross-national applicability of the concept of regime values is also hampered by its tight connection to the oath of office. Rohr (1989) is aware of the fact that the practice to swear such an oath does not exist in all other countries, but he does not draw the conclusion that making the authority of regime values dependent on such a practice drastically limits the applicability of the concept abroad. It seems to do more justice to the concept of regime values itself to loosen the connection. Neither the obligation to promote the values of the regime nor their content depends on the institution of the oath but rather vice versa: The oath itself is an expression of the

regime values of a particular polity. This is not to deny the value of the institution of the oath of office but only to ask attention for its moral basis.

More particularly, it is striking that Rohr says repeatedly that American public officials swear an oath to uphold the regime, the values of the regime, or the values of the Constitution, whereas strictly speaking, they take an oath to uphold the Constitution itself. Now, the Constitution is clearly more specific than the regime and its values. It sometimes contains very detailed articles about the relations between the Union and the states, the responsibilities of the three branches, their respective modes of election and/or appointment, the requirements for their incumbents, and so on. Although, as Rohr says, the obligation to swear to uphold the Constitution as “the supreme law of the land” lies primarily in its being supreme, the Constitution is also really a *law*. If it is true that American officials not only commit themselves to uphold the *values* of the regime or the Constitution but also swear to uphold the Constitution itself, this obligation is clearly not readily transferable to other countries.

Toward a More Normative Conceptualization

In his writings, Rohr has convincingly shown the value of treating public administration as a legitimate institution within the constitutional order—not only of the United States but also of other constitutional democracies such as France, Canada, and the United Kingdom (cf. Rohr, 1995, 1998a, 2002). As Du Gay (2002) has noted, “. . . Rohr’s approach appears as a method of inquiry pertinent to any constitutional regime, and not just to the American constitutional tradition” (p. 470). The constitutional approach he helped to develop remains illuminating and fruitful. His notion of regime values, however, suffers from some serious weaknesses. As we saw, Lawler went so far as to call the concept “unnecessarily vulgar and misleading.” Although he did not explain these harsh words, we can by now see why he used them. The vulgarity of regime values, first, has apparently to do with terminology. Classicists (even when not strictly Straussian) such as Lawler tend to abhor neologisms in general and the concept of values in particular. Theirs may be an overreaction but one that draws our attention to deep ambiguities in the half-ancient, half-modern concept of “regime values.” The (potentially) misleading character of the concept, second, has apparently to do with its implicit contingency. At first sight, Rohr’s regime values seem firmly rooted in the American constitutional tradition, especially in the oath to uphold the Constitution and the authoritative interpretations of the Constitution by the Supreme Court. On closer inspection, however, each of these supposedly solid reference points is too contingent to give secure moral guidance and too particularly American to make the concept useful in other contexts. In short, Rohr’s concept as it stands is overly paradoxical and specific.

Now, we can of course, with Lawler, gladly rid ourselves of the phrase of “regime values,” but then probably the concept referred to by that phrase will continue to haunt us. The constitutional approach to public administration itself seems to presuppose the concept. It is helpful, moreover, to designate a special and important set of public values that might otherwise go unrecognized. And last, it could serve (precisely because of its composite character) as a bridge to connect our contemporary public values discourse to the older constitutional tradition and thus reinvigorate both. Therefore, we should not abandon the concept but rather try to improve on Rohr’s conceptualization and make it more widely applicable. To this purpose, I propose to recognize the normative character of “regime values” more frankly and compare the concept with, for instance, that of “academic values.” These are not any values particular universities happen to have but values that are believed necessary to make universities in general prosper. To put it briefly, they are not so much values *of* a university as values *for* the university. I suggest that the case of “regime values” should be treated in a similar way, namely, more as a prescriptive rather than a descriptive concept, referring to the values, not of any particular historical regime but of the quintessential or simply the best regime.

This of course recalls Aristotle's double use of the word *politeia*. It is noticeable that Rohr refers frequently to Aristotle in his exposition on regime values.¹⁷ The political philosophy on which his concept rests is indeed in large part Aristotelian. His understanding and use of the concept of "regime values," however, are arguably not yet Aristotelian enough. For Aristotle, *politeia* is not only the generic concept for regime (in the broadest sense of the word, as Strauss noted), but it is also the name of one particular regime, namely, the best practically possible regime (Aristotle 1988, 1279a38-40).¹⁸ If we apply this Aristotelian notion to Rohr's concept of regime values, we can say that the values of the American regime (and of other modern regimes) should be supported because and to the extent in which they approximate the values of the best practically possible regime in its respective, mostly national context. Thus, they are not solely based on the actually functioning regime, which may not be flawless ("the American regime as it happens to be"), but on a not unattainably improved imagined version of it ("the American regime as it could be"). The concept of regime values, thus understood, refers not to some mysterious universal moral standard but to the values a particular political order under its own historical and social conditions aspires to realize.

Studying regime values in this way is at once simpler and more difficult than studying them in Rohr's original way: It spares us the difficult task to carve out what are the actual regimes values expressed by constitutional and other governmental institutions, but it requires us to embark on the perhaps even more ambitious task of thinking through the best practically possible version of actual regimes in their particular (mostly national) circumstances. For this purpose, we would still (as in Rohr's own approach) have to study the arguments of founding fathers and constitutional courts as well as their critics, but not for what they say about the regime's actual workings but rather for the aspirations buried in its design—not for its actuality but for its potentiality, to use Aristotelian terms.

Understood in this normative (indeed teleological) sense, the concept of regime values can also be more easily applied to other contexts than the United States. It allows us to see how, even in the absence of an oath of office, a constitutional court, or indeed a written constitution (as in France, the Netherlands, and the United Kingdom, respectively), public administrators can still be guided by the moral principles underlying the regime in which they serve. Such an expanded research agenda would give ample opportunities for comparative studies and theoretical debate. It should include, among others, polities in a phase of transition (Central and Eastern Europe in the 1990s or Arab states nowadays), those combining divergent constitutional traditions (Turkey, Hong Kong) and those founded as administrative and judicial regimes and only later trying to politicize and constitutionalize themselves (the European Union). Applying the concept so widely would entirely be in line with Rohr's approach but also transcend what he and other (mostly American) scholars using the constitutional approach have done so far.

If we adopt this more normative understanding of regime values, inevitably political philosophical questions will recur that go far beyond the everyday concerns of most public administrators. However, only in this way, the concept of regime values can continue to play an important role in administrative theory and practice *and* be applied to contexts outside the United States. In this way, it can also become a much more central notion in the public values discourse.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. After his death in 2011, several public administration prominents have testified for his influence on the field (P. J. Cooper, 2011; Stivers, 2012). A forum with essays in his honor was published in *Administrative Theory & Praxis*, December 2012 (Vol. 43, Issue 4). This issue followed on a “symposium honoring the life, legacy, and contributions of John Rohr” organized at the School of Public Affairs of American University, Washington, D.C., on October 26-27, 2012.
2. One reason is that the constitutionalists have insufficiently distinguished between legitimizing public administration (as a government institution) and legitimizing the administrative state (as a type of government). The subtitle of Rohr’s *To Run a Constitution* reads, *The Legitimacy of the Administrative State*.
3. In Rohr’s view, administrative discretion is the most appropriate starting point for the study of administrative ethics. For the classic study on discretion, see Davis (1969); a more recent extensive treatment is Galligan (1990).
4. U.S. Constitution, article VI, 3: “The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or affirmation, to support this Constitution . . .”
5. Rohr (1989) says that he rejects social equity because it is based “to a considerable extent on normative political philosophy and humanistic psychology” (p. 65) and because it is “too controversial to serve as a broad-based ethical standard for the entire field of public administration” (1998b, p. 1929). Neither argument is really convincing. His own view is no less based on a normative political philosophy and (therefore) is also controversial. While Rohr gave little substantial argument here, other constitutional theorists have offered profound criticisms of New Public Administration and Rawlsian approaches in the study of public administration (e.g., Lawler, 1988; Lawler, Schaefer, & Schaefer, 1998).
6. In the literature, doubts have been raised about Rohr’s claim that Supreme Court opinions are indeed the most appropriate entrance for the study of regime values. Denhardt, for instance, notes that it is unclear to what extent Supreme Court opinions do indeed reflect the “values of the people” or even the general views of a majority of citizens, or whether they should do so. Furthermore, because the opinions of Court may vary, shift, and conflict, they do not necessarily give firm guidance to administrator. Finally, he says that the Court depends on precedents, whereas administrators must often chart new territory (Denhardt, 2007, p. 121). In response, Rohr has pointed out that the Supreme Court is not as tightly bound by precedent as other U.S. courts, but preeminently destined to correct traditions of judicial interpretation if necessary (personal communication with the author).
7. “He outlines a universal concept (regime values), then studies it in the American context. In mentioning French regime values, and acknowledging others, he implies that *any* regime has values of interest to its administrators . . .” (Thayer, 1981, p. 99). In fact, we see that Rohr not only implies it but also explicitly says it.
8. Thayer gives another inaccurate characterization of Rohr’s position when he argues that Rohr’s “regime values (freedom, etc.) seem those of individuals. This places Rohr in the mainstream of ‘individualism,’ and I doubt he would argue for a more organic approach” (1981, p. 99). This is a misunderstanding. For Rohr, the regime is clearly the bearer of these values. And even when he would say that regime values can only be *endorsed* by human persons that would not of course make him an individualist.
9. Likewise, in his encyclopedia entry, Rohr (1998b) points out that “these values were called ‘regime values’—regime being considered the most suitable translation of Aristotle’s *politeia*. Those who used the expression ‘regime values’ were advised to make clear the Aristotelian origin of the term in order to avoid confusion with the journalistic use of the word, as in ‘the Clinton regime,’ ‘the Bush regime,’ and so forth” (pp. 1929-1930).
10. Of course, the point must not be exaggerated. America’s popular form of government was intended, importantly, was a republic rather than a democracy. And while the American people have ratified the Constitution, in swearing to uphold (or as Article VI, 3 literally says, “support”) the Constitution, public officials do not submit to the variable will of today’s populace but to the special expression of the popular will as laid down in the Constitution. Ultimately, therefore, they may be called to uphold the people’s Constitution—and the regime values it represents and sustains—even against the people itself (except, of course, in an orderly process of constitutional amendment). This is an important nuance, but it does not take away the said differences and difficulties.

11. "As we consider ethics in public administration, we need not base our inquiry on regime values but instead on common spiritual values of mankind . . . In public administration we have abandoned the politics/administration dichotomy. Is it that much harder to abandon the spiritual wisdom/values dichotomy brought to us by secularization thinking?" (Lynch, Omdal, & Cruise, 1997, p. 484).
12. Rohr used Woodrow Wilson's famous phrase ("It is getting harder to *run* a constitution than to frame one"; 1887, p. 200) for the title and motto of his 1986 book. In connection to cross-national applicability, it is relevant that Wilson literally wrote about administration as running "*a* constitution" and not "the Constitution" (as correctly cited in the title of Rohr, 1986).
13. The constitutional actors for whom "job" and "duty" presumably most closely approximate each other are Supreme Court Justices. However, even for them, there is a difference, as their most immediate task is to adjudicate the particular cases on their desk. In doing so, they often have to (re)interpret and thus uphold the Constitution, but the "upholding" itself seems not always even *their* immediate task but rather a sort of positive (and compared with administrators, more consciously intended) by-effect.
14. See, however, Du Gay (2002) and Huang and Overeem (2012) for applications to the United Kingdom and Hong Kong, respectively.
15. A regime is "fundamentally" just, according to Rohr, if the values it actually achieves are consistent with its professed values and with the personal values of its citizens, or if it has enough "corrective mechanisms that offer some hope of reform" to the extent that it falls short of this consistency. As Rohr (1989) wisely adds, "It should be noted that [this definition] will lead to no more than a subjective understanding of justice that falls far short of the questions that philosophers have raised over the centuries" (pp. 91-92, Note 39).
16. If the fundamental justice of a regime must be presupposed before we can study its regime values, then apparently justice itself is not a regime value. Or is the fundamental justice of the regime something different from the justice bureaucrats have to promote through their work? Rohr makes no effort to separate those two understandings of justice. To the contrary, he relates them closely to each other: "In the case of a regime that is fundamentally unjust, a good person could not be a good public servant and remain a good person" (1989, p. ix).
17. Namely, in his discussion of the justice of the regime (1989, pp. ix-x), in his explanation of the term "regime" (pp. 3, 68), in referring to the idea that every subject matter should be treated with the proper amount of precision (p. 73), in a discussion about the difficulty to dichotomize between state and society (pp. 90-91, Note 33), in the assertion that regimes must not only be studied legally, but also empirically (p. 91, Note 35), and in a point about the continuous importance in political philosophy of thinking about regimes (p. 92, Note 40).
18. For Aristotle (1988), the best practically possible regime is different from the best abstractly conceivable regime. The latter is monarchy, the former *politeia*, which is a mixture of "corrected" oligarchy and democracy, that is, of rule by the well-to-do few and the not-so-well-to-do many (1293b34-35). Aristotle makes it quite clear, however, that the exact form of the best practically possible regime can differ "relatively to given conditions": "A particular government may be preferable, but another form may be better for some people" (1296b9-10).

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Author Biography

Patrick Overeem is an assistant professor at the Institute of Public Administration of Leiden University (Campus The Hague) in The Netherlands. He specializes in political and administrative theory, with a special interest in public ethics. In his doctoral dissertation (2010; published 2012), he investigated the constitutional rationale for the dichotomy between politics and administration in modern states. His articles have been published in *Public Administration Review*, *Administration & Society*, and *Administrative Theory & Praxis*. His current research concerns constitutional legitimacy, virtue-ethics, statesmanship, and the political implications of value pluralism. He teaches courses on political philosophy, administrative ethics, public values, and the philosophy of social science.